



## ***PensionsEurope answer on EC's consultation on integration of EU capital markets***

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[www.pensionseurope.eu](http://www.pensionseurope.eu)

PensionsEurope welcomes the EC consultation which aims to remove obstacles to financial market integration across the EU. This effort is a key part of rolling out the savings and investments union (SIU) and pension funds as institutional investors highly welcome the initiative.

Please find below our answers, only to the following relevant questions for us

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## **Part 1:**

### **1. Simplification and burden reduction**

The focus of this targeted consultation is to remove barriers to enhance the integration of the EU capital markets and to support their modernisation. By doing so, it will contribute to simplify the framework of EU capital markets and support the Commission's initiative to make Europe faster and simpler. This section seeks stakeholders' view on general questions regarding simplification and burden reduction of the EU regulatory framework in the trade, post-trade and asset management and funds sectors. Respondents are asked to provide concrete examples to support answers provided, and, where possible, quantitative and qualitative information.

Question 1: Is there a need for greater proportionality in the EU regulatory framework related to the trade, post-trade, asset management and funds sectors? Please choose from 1 (strongly agree) to 5 (strongly disagree) or 'no opinion'. If yes, please explain and provide suggestion on what form it should take.

1-Strongly agree	2-Agree	3-Neutral	4-Disagree	5-Strongly disagree	Don't know / no opinion / not applicable
				x	

Please explain: (5000 character(s) maximum)

PensionsEurope questions the lack of proportionality in reporting requirements relating to derivatives transactions. Most IORPs in Europe only have a limited number of derivatives in portfolio. In a few specific Member States, such as the Netherlands most pension funds have large portfolios of derivatives to hedge their interest rate risk. Derivative trading comes with high reporting requirements, and we question the usefulness of their intensity.

Under the European Market Infrastructure Regulation (EMIR) and Securities Financing Transactions Regulation (SFTR), pension funds' service providers deliver daily reports, which is an unproportionate administrative burden. In the EMIR refit, the required information fields for daily reports have increased from 129 to 203. The high-quality standards in terms of pairing and matching percentages as well as notification of wrongly reported transactions, bring high operational risks and reporting burdens. A lower reporting frequency, with monthly updates, would be less burdensome yet still suitable for supervisors to gain the necessary insights.

The reporting requirements proposed by ESMA under the draft Active Account Requirement RTS (published on 20 November 2024) are set to exacerbate the issue further. We disagree with the proposed approach to reporting the activity and risk exposures of counterparties subject to the active account requirements. Trade repository data is already collected, so ESMA and NCAs have the necessary data available. The proposals, therefore, lead to duplicative and unnecessarily burdensome reporting requirements. PensionsEurope strongly encourages the Commission to scrutinise the forthcoming RTS in terms of proportionality and usefulness of reporting requirements.

Pension funds in certain MSs, also mandatorily report to ESMA on derivative contracts in Trade Repositories. These Trade Repositories provide regulators and supervisors with insight into (over-the-

counter) derivatives markets, increasing transparency in these markets. Financial entities have to notify derivatives trades within a day after the trade. That gives an enormous workload and time pressure. Even some of the biggest Dutch pension funds have not found a way to automate these activities. The reporting workload could be reduced by extending the deadline to five days after the trade.

In the Netherlands, parties in over-the-counter derivative contracts have to notify disputes to the National Financial Markets Authority (AFM). There seems to be no use for this reporting requirement, considering the relevant law does not provide any goal for these notifications. Nor does it prescribe how the supervisor should act upon these notifications or what competencies it has. These notifications should be abolished. Pension funds experience double reporting because of an overlap between EMIR and MiFID with regard to derivative transactions. Double reporting is enhanced because EMIR is supervised by ESMA, while MiFID is supervised by the national supervisor. Overlaps between EMIR and MiFID reporting requirements should be removed, and ESMA should not require reporting of data that is already available at the national supervisor.

With additional reporting requirements IORPs that currently make limited use of derivatives to hedge certain risks will stop using derivatives. As such this will increase the risk exposure of those IORPs which cannot be the purpose. Especially for horizontal regulation, it is important to introduce proportionality linked to the specific financial institutions. With the implementation of DORA we noticed that the approach taken was not fit for purpose for most of the IORPs. This increased administrative burden and costs, while hardly any added value was created. We agree that operational risk and cyber security should be taken seriously, but this should be done in an appropriate way, taking into account proportionality and keeping an eye on the cost efficiency of the measures taken. We have a similar concern with the plans around FiDA. |

Question 9: Would more EU-level supervision contribute to the aim of simplification and burden reduction? Please choose from 1 (strongly agree) to 5 (strongly disagree) or 'no opinion' and explain.

1-Strongly agree	2-Agree	3-Neutral	4-Disagree	5-Strongly disagree	Don't know / no opinion / not applicable
		x			

Please, explain if the answer chosen is 1 (strongly agree) to 5 (strongly disagree) : (5000 character(s) maximum)

Whether there should be more (or less) EU supervision (and regulation) is overly simplistic. The EU supervisory framework should distinguish between market infrastructure and cross-border financial institutions offering a largely harmonised product on the one hand and domestic markets on the other. In the case of the former, there is a logic that European supervision leads to simplification. A uniform application of rules is beneficial where there is much cross-border activity and where economies of scale can be further improved.

As occupational pension is embedded in a member state pension landscape and labour market, supervision of IORPs requires in-depth knowledge of national social and labour law. A trend towards more EU-level supervision is, given the heterogeneous nature of the European (supplementary) pensions landscape, therefore not expedient. Supervision should be concentrated with the national supervisory bodies, while the focus at EU level should be to set a minimum threshold that national legislation must meet.

The features of the “product” provided by IORPs diverge greatly from one Member State to the next and are directly linked to national law and the overall pension system. It requires a thorough understanding of the national context in order to be able to supervise this product. We therefore strongly believe that European supervision of IORPs would lead to an increase of administrative burden, due to inappropriate regulatory actions. ]

## **2. Simplification and burden reduction**

### **3.3 Barriers and other aspects under the FCD (Financial Collateral Directive)**

Question 86: In the last FCD consultation, the addition re-insurers, alternative investment funds (AIF), institutions for occupational retirement provision (IORPs), crypto-asset service providers, all non-natural persons, non-financial market participants which regularly enter into physically or financially settled forward contracts for commodities or EU allowances (EUAs) was suggested by stakeholders. It was also asked if payment institutions, e-money institutions and CSDs should be added to the scope.

Please provide any views you may have of one or several of the suggested potential additional participants. (5000 character(s) maximum)

[We see no benefit in adding IORPs to the scope of FCD. It will only increase costs for IORPs and ultimately reduce the pensions of the beneficiaries. In the FCD consultation, only one stakeholder suggested adding IORPs to the scope because IORPs have been included under French Law (a country that at the time of consultation had no IORPs). This is in line with the minimum harmonization principle of IORP II and acknowledges the heterogeneity of the pension fund sector in Europe. ]

## **Part 2:**

### **6. Supervision**

This section covers the European Supervisory Authorities (ESAs) with a special focus on the European Securities and Markets Authority (ESMA). It is divided into three parts:

1. The first part focuses on the effectiveness of the current framework
2. The second part goes into more detail regarding the specific sectors, i.e. central counterparties (CCPs), central securities depositories (CSDs), trading venues, asset managers, and cryptos assets service providers
3. The last part covers four horizontal areas: the governance framework for new direct supervisory mandates, supervisory convergence, data and funding Respondents are invited to provide concrete examples to support their responses, and, where possible, include quantitative and qualitative input.

#### **6.2. Specific questions on supervisory arrangements for different sectors**

- 4) Do you have ideas how EU-level supervision of financial markets could be structured (for example the whole or part of the sector should be supervised at EU level, supervisory decisions could be taken at EU level or national, etc.)?

What broad changes would that involve in terms of

- supervisory architecture and supervisors' responsibilities,
- supervisors' approach to exercise their mandates and processes,
- improved cooperation among supervisors?

(5000 character(s) maximum)

As institutional investors, pension funds benefit from more integrated European markets if these can deliver more liquidity and lower costs than currently is the case. We foresee a role for a gradual and functional move toward more centralized EU supervision for financial markets, in particular where:

- Cross-border selling is involved and the cross-border activity is systemic or growing,
- Supervisory fragmentation of equal financial products or services leads to inconsistent outcomes, or
- Regarding commercial products/services, harmonized implementation of EU rules is essential for investor protection

We, therefore, support pragmatic steps toward a more coherent supervisory structure, with potentially an enhanced role for ESMA in overseeing cross-border and systemically relevant selling activities, and a more coordinated supervisory approach across the Union.

At the same time, we underline that indirect supervision should remain in place for activities that are not expected to become cross-border or which are not commercial at all. Regulation for IORPs is deeply rooted in national social and labour law and supervision requires in-depth

knowledge of national legislation. IORPs are often managed by social partners and supervision requires interaction with these stakeholders. IORPs often do not sell anything and do not develop products as such. All communication, regulation and documentation is only available in the member states official language(s). In addition, the European pension sector is very diverse as it is embedded in national social security benefits and social and labour regulations. PensionsEurope therefore would strongly oppose a stronger role for EIOPA in the supervision of pension funds.

## 7. Horizontal questions on the supervisory framework

- 1) What should be the key objectives behind a decision to grant direct supervision to the ESMA?

Please provide your answer by choosing from 1 (agree - very important objective), 2 (agree important objective), 3 (neutral), 4 (rather disagree (i.e. less important), 5 (disagree (not important), (no opinion)

	1	2	3	4	5	No opinion
a) Streamlined supervisory process						x
b) Single supervisory point of contact and efficiency in the engagement with a single supervisor, instead of multiple NCAs						x
c) Reduced volume of Level 2 legislation (technical standards) and supervisory guidelines						x
d) Coherent supervisory outcomes for the EU market as a whole					x	
e) more harmonised application of EU rules					x	
f) enhanced pool of expertise and resources						x
g) building synergies and avoiding duplications,					x	
h) ensuring a high level of supervision across EU					x	
i) reduced costs			x			
j) other						

- 2) What would be the costs (one off costs and ongoing costs) and savings for your organisation associated with new direct supervisory mandates at the EU level? (5000 character(s) maximum)

As users of the services supervised by ESMA, pension funds do not foresee any direct costs for members and beneficiaries. However, PensionsEurope believes that granting direct supervision to ESMA could stimulate further integration and economies of scale, that could lead to lower costs for end-users in the long run.

However, European Supervision for IORPs would be devastating for a large number of the IORPs resulting in a huge cost increase and ultimately a reduction in pensions for members and beneficiaries. Supervision of a sector heterogeneous across the EU and even within Member States should not be supervised centrally. Only supervision at the Member State level can guarantee a cost-effective and fit-for-purpose approach.

## 7.2. Supervisory convergence

Please select the ESA(s) for which you are replying, this selection will apply to all questions included this section. ~~ESMA~~ / EIOPA / ~~EBA~~

7. Please rate the effectiveness of supervisory convergence tools from 1 to 5 (1 least effective, 5 most effective)

	1	2	3	4	5	No opinion
Breach of Union law						x
Binding mediation						x
Peer reviews				x		
Emergency powers						x
Opinions		x				
Recommendations				x		
Product intervention powers						x
Inquiries						x
No action letters					x	
Guidelines				x		
Colleges of supervisors						x
Coordination groups						x
Collaboration platforms						x
Warnings						x
Questions and Answers					x	
Supervisory handbooks						x
Stress tests				x		
Union strategic supervisory priorities				x		
other, please specify						

If you would like to differentiate per areas, please comment : (5000 character(s) maximum)



Given the diversity of pension systems across Member States (e.g. with regard to the size and role of occupational pensions) and the role of national social security, national labour, social and tax law for occupational pensions, the IORP II Directive rightly follows a minimum harmonization approach. Hence, from the perspective of IORPs, supervisory convergence is not a goal worth achieving – it would even damage our sector. |

### 7.3. Increasing the effective use of supervisory convergence tools

8) Do you think that the current supervisory convergence tools are used effectively and to the extent that is possible?

~~Y/N~~ If the answer is no, please explain and give examples

#### **YES**

| EIOPA is making use of tools such as guidance, opinions and peer reviews to stimulate convergence and peer-to-peer learning. However, the importance of supervisory convergence for the IORP sector is limited compared to other sectors, given the diversity in the sector and given that most IORPs do not have any commercial activity or commercial products. While most financial products are roughly comparable across borders – e.g. investment funds, bank accounts and insurance products – the pension schemes offered to employees across Europe are tailor-made for a specific employer/employee environment and as such differ greatly. Differences include defined benefit versus defined contribution, the existence of sponsor support, mandatory versus voluntary enrolment, the existence or absence of investment choice, differences in national labour and tax law, and the role of social partners in governance and product design. Moreover, the cross-border activity of IORPs is nearly non-existent and again is not about selling a product cross border but more about organising the governance centrally to offer the sponsor an integrated view. For these reasons, supervisory convergence is a less important objective for EIOPA and its members vis-à-vis IORPs, than it is for other sectors of the financial sector. For this reason, PensionsEurope believes that opinions are a more appropriate tool than guidelines because they give the NCAs the necessary flexibility. |

9) Do you think that the current governance and decision-making processes within ESAs provide sufficient incentives for the use of supervisory convergence tools?

Y/N

#### **YES**

### 7.4 Enhancements to existing tools

Please select the ESA(s) for which you are replying, this selection will apply to all questions included this section. ~~ESMA~~ / EIOPA / ~~EBA~~

12) Do you see limitations or weaknesses in supervisory convergence tools in addressing significant divergences in supervisory practices between NCAs?

Supervisory convergence tool	YES	NO
Breach of Union law		x
Binding mediation		x
Peer reviews		x
Emergency powers		X
Opinions		x
Recommendations		x
Product intervention powers		x
Inquiries		x
No action letters		x
Guidelines	x	
Colleges of supervisors		x
Coordination groups		X
Collaboration platforms		x
Warnings		x
Questions and Answers		x
Supervisory handbook		x
Stress tests		x
Union Strategic Supervisory Priorities		x
other, please specify		

If the answer is yes, please explain why and in which specific areas. If your answer is yes, what concrete changes would you propose to address the limitations or weaknesses flagged and make these tools more effective?

13) ESAs founding regulations and sectoral legislation lay down the requirements to delegate tasks and responsibilities both from NCAs to ESAs or from ESAs to NCAs. This tool has been rarely used. What kind of changes would be warranted to increase its usability?

Please explain, highlighting benefits and downsides (5000 character(s) maximum)

EIOPA shall act not only within the powers conferred by the EIOPA-Regulation but also within the scope of IORP II (see Article 1 (2)). The objectives and instruments of the EIOPA Regulation do not always match the IORP II Directive. We suggest amending appropriately the EIOPA Regulation.

## 7.5 Possible new supervisory convergence tools

Please select the ESA(s) for which you are replying, this selection will apply to all questions included this section. ~~ESMA~~ / EIOPA / ~~EBA~~

14) Do you see limitations in the current supervisory convergence tools to address home/host issues?

Y/N

If the answer is yes, please explain: (5000 character(s) maximum)

- what potential measures could be introduced to assess and ensure the effectiveness of home and host supervision in a given sector
- for which sectors would you support the new measures
- the cost and expected benefits of these new measures

**NO**

As far as IORPs are concerned, cross-border activity is very limited. This is regularly confirmed by EIOPA's own reports. PensionsEurope believes that EU regulators already put too much emphasis on cross-border activity of IORPs. There is no need for further supervisory convergence tools. |

16) Do you think that ESAs should be empowered to issue a binding advice in cases where national supervision is deemed ineffective?

~~Y/N~~. If your answer is 'no' to the questions above, please explain why. If your answer is yes, please specify in which areas. (5000 character(s) maximum)

**No**

This question seems to imply a broad-sweeping power to provide binding advice, thereby overruling national supervision. If it is indeed intended as a general power, it would mean that the ESAs could effectively enforce EU supervision in case they saw fit. This would be inappropriate for EIOPA in the case of IORPs. We have often seen that EIOPA does not have the knowledge of relevant local social and labour laws, which essentially govern the "product" (the pension scheme). Consequently, the ESAs, in particular EIOPA, are in no position to issue binding advice regarding occupational pensions – or even evaluate properly the effectiveness of national supervision. |

18) Are there additional supervisory convergence tools that should be introduced? Please provide an example and explanation. (5000 character(s) maximum)

No. As argued above, from the perspective of pension funds, supervisory convergence is not a target worth achieving. |

## 7.7 Funding

23) Do you consider the provisions on financing and resources for the tasks and responsibilities of the ESAs appropriate?

~~Y/N~~. Please explain your answer

**YES**

We believe that the resources allocated to EIOPA for PEPP given the (very) limited use of PEPP are disproportionately high. Moreover, we reject any unnecessary expansion of EIOPA's staff and the resulting higher costs

24) ESAs face pressure to fulfil a growing number of mandates while staying within the ceilings of the multi-annual financial framework (MFF). Taking into account the limitations of public financing, should ESAs be fully funded by the financial sector?

Y/N Please explain your answer

**NO**

No, the ESAs should not be fully funded by the financial sector. At the national level, having supervisors funded by the sector leads to a significant expansion of activities, without the necessary checks and balances to keep budgets under control.

### **About PensionsEurope**

**PensionsEurope** represents national associations of pension funds and similar institutions for workplace and other funded pensions. Some members operate purely individual pension schemes. PensionsEurope has **25 member associations** in 19 EU Member States and 3 other European countries<sup>1</sup>.

PensionsEurope member organisations cover different types of workplace pensions for approximately over **100 million people**. Through its Member Associations PensionsEurope represents over **€ 6 trillion of assets** managed for future pension payments. In addition, many members of PensionsEurope also cover personal pensions, which are connected with an employment relation.

PensionsEurope also has **14 Corporate and Supporter Members** which are various service providers and stakeholders that work with IORPs.

PensionsEurope has established a **Central & Eastern European Countries Forum (CEEC Forum)** to discuss issues common to pension systems in that region.

PensionsEurope has established a **Multinational Advisory Group (MAG)** which delivers advice on pension issues to PensionsEurope. It provides a collective voice and information sharing for the expertise and opinions of multinationals.

### **What PensionsEurope stands for**

- A regulatory environment encouraging workplace pension membership.
- Ensure that more and more Europeans can benefit from an adequate income in retirement.
- Policies which will enable sufficient contributions and good returns.

### **Our members offer**

- Economies of scale in governance, administration and asset management.
- Risk pooling and often intergenerational risk-sharing.
- Often “not-for-profit” and some/all of the costs are borne by the employer.
- Members of workplace pension schemes often benefit from a contribution paid by the employer.

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<sup>1</sup> EU Member States: Austria, Belgium, Bulgaria, Croatia, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Lithuania Luxembourg, Netherlands, Portugal, Romania, Spain, Sweden. Non-EU Member States: Iceland, Norway, Switzerland.

- Wide-scale coverage due to mandatory participation, sector-wide participation based on collective agreements and soft-compulsion elements such as auto-enrolment.
- Good governance and alignment of interest due to participation of the main stakeholders.

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